



**EUROPEAN UNION COMPETITION LAW IN SPORTS:
CASES AND RELEVANT ASPECTS OF ARTICLES 101 AND 102 OF THE TREATY ON
THE FUNCTIONING OF THE EUROPEAN UNION, THEIR IMPORTANCE AND
INFLUENCE ON SPORT MANAGERS AND INSTITUTIONS**

¹ Carlos Eugenio Zardini Filho

ABSTRACT

Recent sport professionalization demanded governmental regulation on the overall sport competition environment. This work intends to clarify and illustrate some important aspects of the European Union Competition Law that are applied to sport organizations and for managers, showing how some important cases have shaped sport practices. Specifically, the current articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) are the focus of this analysis. In brief, the Courts are now supporting their decisions about sport competition issues based not only on the TFEU, but also on the White Paper of Sport and referential cases. Above all, as a consequence of the Meca-Medina case, targeting to evaluate whether a rule adopted by a sport association infringes articles 101 and 102, a methodological approach was defined: Wouters steps (European Commission, 2007). Sports athletes, managers and institutions should assess if their entities are under the umbrella of the European Union Competition Law, taking into account the Wouters steps and the elements of the article 101 (3). Surely, any sport rule in the EU needs to observe the necessity of legitimate objectives and the proportionality of the actions in order to achieve these goals. The case-by-case Court of Justice approach of analysis was chosen as the best option, after all, general exemptions or applications could not take into consideration the specificities of the sport phenomenon. Additionally, sport managers should always foresee the effects of their rules and decisions on the sport industry, in terms of restricting or distorting competition.

Keywords: Sports Law; EU Competition Law; Sport Management.

¹ Master of Sport Management from Coventry University - CU, (England). Analyst in the Special Advisory Office of Projects of the Cabinet of the Minister in the Ministry of Sport of Brazil. E-mail: carlos.zardini@gmail.com

**LEI DA CONCORRÊNCIA DA UNIÃO EUROPEIA NO ESPORTE:
CASOS E ASPECTOS RELEVANTES DOS ARTIGOS 101 E 102 DO TRATADO DE
FUNCIONAMENTO DA UNIÃO EUROPEIA, SUAS IMPORTÂNCIAS E INFLUÊNCIAS SOBRE
GESTORES E INSTITUIÇÕES ESPORTIVAS.**

RESUMO

A profissionalização recente do esporte exigiu que os governos regulassem o ambiente geral de competição esportiva. Este trabalho procura esclarecer e ilustrar alguns aspectos importantes da Lei da Concorrência da União Europeia que são aplicados às organizações e gestores esportivos, mostrando como alguns importantes casos moldaram as práticas esportivas nos dias de hoje. Especificamente, os atuais artigos 101 e 102 do Tratado de Funcionamento da União Europeia (TFUE) são o foco da análise. Em suma, os Tribunais estão agora embasando suas decisões sobre questões de concorrência no esporte não só com base no TFUE, mas também no *White Paper on Sport* e em alguns casos referenciais. Acima de tudo, como consequência do caso Meca-Medina, definiu-se uma abordagem metodológica visando avaliar se uma regra adotada por uma associação esportiva viola os artigos 101 e 102, “*pasos de Wouters*” (Comissão Europeia, 2007). Os atletas, gestores e instituições esportivas devem avaliar se as suas entidades estão ao alcance da Lei da Concorrência considerando os passos de *Wouters* e os elementos do artigo 101. Certamente, qualquer regra esportiva na UE precisa observar a necessidade de objetivos legítimos que a apoiem e a proporcionalidade das ações para atingir estes objetivos. A abordagem de análise caso a caso do Tribunal de Justiça é a melhor opção, afinal, as exceções ou aplicações da Lei podem não levar em conta as especificidades do fenômeno esportivo. Além disso, os gestores esportivos devem sempre prever os efeitos de suas regras e decisões, em termos de restringir ou distorcer a concorrência.

Palavras-chave: Legislação esportiva; Lei da Concorrência da UE; Gestão do esporte.

**LEY DE COMPETICIÓN DE LA UNIÓN EUROPEA EN DEPORTES:
CASOS Y ASPECTOS RELEVANTES DE LOS ARTÍCULOS 101 Y 102 DEL TRATADO SOBRE
EL FUNCIONAMIENTO DE LA UNIÓN EUROPEA, SU IMPORTANCIA E INFLUENCIA EN
LOS GERENTES DEPORTIVOS E INSTITUCIONES.**

RESUMEN

La reciente profesionalización del deporte demandaba a los gobiernos que regulasen el competitivo ambiente deportivo en general. Este trabajo trata de aclarar e ilustrar algunos aspectos importantes de la Ley de Competición de la Unión Europea que se aplican en las organizaciones deportivas y gerentes, demostrando cómo algunos casos importantes han adaptado prácticas deportivas hoy en día. Concretamente, los actuales artículos 101 y 102 del Tratado sobre el Funcionamiento en la Unión Europea (TFEU) son el objetivo del análisis. En resumen, las cortes apoyan sus decisiones no solo basadas en el TFEU. Sobre todo, como consecuencia del caso Meca-Medina, con el objetivo de evaluar que una regla adoptada por una asociación deportiva infringe los artículos 101 y 102, se definió una aproximación metodológica, “*Wouters pasos*” (Comisión Europea, 2007). Atletas deportivos, gerentes e instituciones deben evaluar si sus entidades están bajo el amparo de la Ley teniendo en cuenta los pasos de “*Wouters*” y los elementos del artículo 101 (3). Seguramente, cualquier regla deportiva dentro de la UE necesita observar la necesidad de legitimar los objetivos apoyándolo y la proporcionalidad de las acciones con el fin de alcanzar estos objetivos. El análisis del acercamiento a la individualización de casos del Tribunal de Justicia es la mejor opción, después de todo, excepciones generales o solicitudes podrían no tener en cuenta las particularidades del fenómeno deportivo. Asimismo, gerentes deportivos deberían prever siempre los efectos de sus reglas y las decisiones en la industria del deporte, en términos de restricción o deformación en competición.

Palabras clave: Ley deportiva; Ley de Competición de la Unión Europea; Gestión deportiva.

1. INTRODUCTION

Since ancient Greece, the sport phenomenon has been seen as one of the most important human creations. Undoubtedly, sports have changed their initial nature, not being nowadays just a way to get pleasure or a leisure time, but an extremely competitive business. In doing so, the last century witnesses how amateur athletes and organizations have started to be professional ones and, consequently, taking up companies only with the purpose of handling their brands, goals and profit. As a result, the governments have begun a run against the unleashed development of sports sector, in order to regulate it and avoiding unfair disputes in business.

As a consequence of these regulation initiatives, according to Relógio (2013), the European Court (EC) has produced a countless number of jurisprudences related to sport organizations, their practices and promotion, which are used during new Court's decisions as key elements (Siekman, 2012). In this sense, as pointed out by Sato and Yeung (2013), studies about the implications of the European Union (EU) Competition Law on sports still need more insights, covering more areas and the historic evolution of the law. Moreover, Siekman (2012) highlighted the necessity of analyzing more sports cases (e.g. about sport specificities) and the Treaty on the Functioning of the European Union – TFEU. Similarly, Akman (2016) calls for more studies on sport laws, particularly, on the real applicability of legal principles, which would help managers and institutions to not face unnecessary prosecution and reputation damages (CCPC, 2017).

In this way, this work tries to clarify and illustrate some important aspects of the European Union Competition Law that are applied to the sport organizations and managers, giving a summarized and not exhaustive answer about why this legal system

is important for sport managers and institutions and how some important cases have shaped sport practices in the EU. Specifically, the current denominated articles 101 and 102 of the TFEU are the focus of the analysis, since they have been more used in Courts when assessing sports issues. Indeed, the importance of the application of these articles in the sport environment “has increased proportionally to the growing economic significance of professional sport” (Kienapfel & Stein, 2007: 6).

In the light of structure, this paper presents a brief historical contextualization of legal points regards sports, making a link with the current scenario. Besides, we observed specific cases and the abovementioned articles 101 and 102, describing and analyzing them in terms of their relevancy and applicability to sport managers and institutions. After, a conclusion resumes the main points of these articles and their importance to sport managers and institutions.

2. METHOD

In terms of method, in line with Cesar (2017), Sato and Yeung (2013), and Baxter and Jack (2008), this paper uses a multiple-case (collective) study approach, aiming at the exam of several cases to increase the understanding around a subject. As a matter of fact, this method does not allow generalization of results, but a broader interpretation of a subject, aiding researchers to propose new theories (Yin, 2001). Not to mention, the study has also elements of bricolage (Neira & Lippi, 2012).

For data collection procedure, we used the Locate Coventry University and the EUR-Lex search platforms, over three months in 2015, looking for studies and cases regarding the TFEU and sports. After that, the most

relevant and recurrent findings were selected to further analysis.

3. EVOLUTION AND MAIN LEGAL POINTS FOR EUROPEAN SPORTS

At first, a short contextualization about the European legal framework is provided, followed by cases correlated with sports, which gives the main basis to analyze how the EU Competition Law impacts and dialogues with sport managers and institutions.

3.1 EU Competition Law and Sports

Basically, as part of the Treaty of Rome (1957), which regulated structural relations of the EU, rules on competition laid down in the articles 81 and 82 of the European Community (EC) Treaty (European Commission, 2013). Regarding sports, some orientations were given by Declarations, like Amsterdam (1997) and Nice (2000). The first one refers to the social impact of sports, especially the amateur environment; whereas the second one exposes that EC Treaty competition rules on sport sector must take into account the specific of it, particularly its uncertainty of results (Siekmann, 2012).

In 2007, the Treaty of Lisbon was signed by the European State Members in order to update the Treaty of Rome, which generated in 2009 the TFEU (Europedia, 2017). For this reason, articles 81 and 82 of the EC Treaty have become, respectively, articles 101 and 102 of the new TFEU (Practical Law, 2017). Moreover, the above mention Declarations were, in fact, substituted by a sport provision in the Lisbon Treaty (Siekmann, 2012).

3.1.1 Art. 101.

The article 101 is composed of three paragraphs, whose first one covers cartels, through price fixing, market sharing and agreements in both horizontal and vertical levels aiming to avoid restriction or distortion

of competition related to trading between the members of the EU (Reinisch, 2012).

The second paragraph portrays that agreements or decisions prohibited pursuant to this article are not legally valid. Finally, the third part provides a list of prohibitions with regards to the content of the first paragraph (European Commission, 2007).

3.1.2 Art 102.

The second article deals with “the prohibition of abuse of a dominant market position”, which correlates abuse with: imposing unfair prices and trade conditions, limiting production, unjustified conditions to equivalent transactions and subjecting contracts to unconnected supplementary obligations (Reinisch, 2012: 190).

Additionally, the abuse falls into the scope of the TFEU when made by “one or more undertakings of a dominant position within the common market or in a substantial part of it insofar as it may affect trade between the Member States” (European Commission, 2007:68). In this sense, the relevant market is an element to be taken into consideration, aiming to determine whether there is some real market dominance (Reinisch, 2012).

In contrast, in specific situations, like in the *Irish Sugar plc vs Commission of the European Communities* case (European Union, 1999), a “dominant company can justify aggressive practices in the light of protecting its market position and aiming at achieving efficiency which results in benefits to consumers” (Reinisch, 2012: 199).

In a word, the first article prohibits agreements or decisions from undertakings that prevent, restrict or distort competition. In complement, the second one deals with the abuse of dominance which impacts on an effective competition (O’Leary, 2012; Reinisch, 2012).

Once seen the essential elements of the EU Competition Law, it is crucial to observe how jurisprudences related to sport issues was

constructed over time as well. After all, until the entry of the TFEU, sport was not mentioned in the Treaties. That is, the EU had not granted a competency to operate a 'direct' sports policy. Under those circumstances, EU sports policy had been guided by relevant judgments of the European Court of Justice - ECJ (Parrish, García, Miettinen, & Siekmann, 2010). Below, these cases are initially reported and segmented based on the important case of *Meca-Medina*.

3.2 Crucial Cases Before *Meca-Medina*

According to Vermeersch (2007: 238), in 1974, the ECJ stated that "the practice of sport is subject to Community law only insofar as it constitutes an economic activity". Certainly, this idea was the basic condition for cases like *Walrave and Koch vs Association Union Cycliste Internationale* (European Union, 1974) and *Gaetano Donà vs Mario Mantero* (European Union, 1976). The first one was the first sports related case which came in front of the ECJ, while the second stated that regulations based on nationality which limit the mobility of sportsmen were not in conformity with the principle of free movement of workers (Fidanoğlu, 2011).

Prior to these cases, Vermeersch (2007: 238) claims that sport had been seen covered by peculiarities, the purely sporting rules, treated as legal exceptions. An important fact, in 1986, the Agreements of Minor Importance has implemented that certain agreements would be outside of the scope of EU Competition Law, in reason of they were not financially relevant to the respective markets (Reinisch, 2012). Given these points, until the end of the 80s, sports in Europe were surrounded by exceptions in terms of their nature and economic aspects.

Rompuy (2015) explains that the proper application of the EU Competition Law upon sport sectors was a result of recent developments, due to the growing commercialization of professional sports in the

90's. In 1994, the *Gottrup Klim Grovvareforening vs Dansk Landbrugs Grovvaarese* (European Union, 1994) case, for the first time, showed the idea of legitimate objectives as a justification for restrictions on competition, which was essential to the *Wouters and Others vs Algemene Raad van de Nederlandse Orde van Advocaten* (Court of Justice of the European Union, 2002) judgment.

According to Janssen and Kloosterhuis (2016), the *Wouters* case dealt with a regulation containing a prohibition of multidisciplinary partnerships between lawyers and accountants. The Court of Justice concluded that the Bar (the body that regulates the legal profession in the Netherlands) could reasonably have considered that the regulation was necessary for the proper practice of the legal profession. The same authors pointed out that the case has created a doctrine that allows an analysis of restrictions on competition considering certain benefits to the consumer and/or to the public interest within the provisions of article 101.

After *Wouters*, the same type of reasoning has been applied in several other Court cases (Janssen & Kloosterhuis, 2016). A key point, *Wouters's* case was the main column for the *David Meca-Medina and Igor Majcen vs Commission of the European Communities* case (Court of Justice of the European Union, 2006a), which was a turning point in the history of the EU Competition Law applied on sports (Vermeersch, 2007).

3.3 *Meca-Medina* Case.

Meca-Medina (2006) was the case that changed the view of how legally to assess a sport rule in competition issues. Basically, it was the first time that the EU Competition Law (the previous articles 81 and 82 of the EC Treaty) was applied on a sporting organizational rule (European Commission, 2007; Rompuy, 2015; Siekman, 2012), which

led to the break of the “purely sporting” exception (Rompuy 2015: 2).

In that case, the swimmers *Meca-Medina* and *Majcen* had argued that the International Olympic Committee – IOC was abusing its dominant position by imposing rules on doping (Vermeersch, 2007). The Court of First Instance (CFI) turned down that allegation, arguing that “purely sporting legislation may have nothing to do with economic activity” (Vermeersch 2007: 242), which would result in a rule not achieved by the TFEU. Due to this supportive argument, the exclusion of anti-doping rules in regards to the applicability of the articles 101 and 102 was considered an error of law (Kienapfel & Stein, 2007). Consequently, the European Court of Justice (ECJ) re-assessed the case, indicating that sporting rules do not *a priori* escape from the application of the law (Vermeersch, 2007).

Likewise, the ECJ deliberated that the *Wouters* test (detailed later) was the “appropriate method to give weight to the specific characteristics of sport” (Rompuy, 2015: 3), concluding that the proper analysis should have taken into consideration the overall context, the legitimate objectives of the rules, whether the restrictive effects of them are inherent in the pursuit of these objectives and proportionate to them (European Commission, 2007). Today, thanks to *Meca-Medina* case, all areas of sports have become subject to EU Competition Law, even those “genuine sporting activities” (Budzinski, 2012: 46).

In a nutshell, these key historical points show the intention and evolution of the EU Competition Law and of some legal procedures regard sports, that is, to create mechanisms and jurisprudences to assess and regulate more efficiently the competition environment of sports.

4. MAIN ANALYSIS.

Based on the main competition pillars presented, sporting issues are then observed through the lens of the abovementioned

articles and using relevant legal cases selected from data collection procedure. In this sense, the main analysis focuses on marks explicitly applied for sports, why they are important for managers and institutions and how sport practices are shaped by them nowadays.

4.1 Applicability of the Articles for European Sport Managers and Institutions

Initially, as a legacy of *Meca-Medina* and from the preparations for the Lisbon Treaty, in 2007, the European Commission adopted the White Paper on Sport (until now). Surely, the necessity of guidance for the application of EU competition rules from several provisions has supported the elaboration of that Paper (European Commission, 2007), which is a “comprehensive initiative on sport undertaken by the Commission and aims at providing strategic orientation on the role of sport in the EU” (Kienapfel & Stein, 2007: 6) and providing clarity on the application of EU legal provisions on sports (Siekman, 2012). In this way, the applicability of the TFEU articles is also influenced by this guide.

Comparatively, considering the TFEU articles and the complementary legal points (cases and White Paper), the application of the EU Competition Law can be visualized by different prisms. Above all, as a proper consequence of the *Meca-Medina* case, targeting to evaluate whether a rule adopted by a sport association infringes articles 101 and 102, a methodological approach (*Wouters*) was defined and it is composed of different macro steps (European Commission, 2007; Kienapfel & Stein, 2007).

The first step analyzes whether the sport association in question is an undertaking or an association of them (Budzinski, 2012; European Commission, 2007). The White Paper on Sport (European Commission, 2007: 65) outlined that eventual undertaking has to carry out an economic activity, “regardless of the legal status of the entity and the way in

which it is financed". Therefore, in the absence of economic activity (the business element), the sport entity does not fall within the scope of the articles (Budzinski, 2012: 49).

The nature of the activity can then change the understanding of the undertaking's concept. Cases like the *Federación Española de Empresas de Tecnología Sanitaria vs Commission of the European Communities* (Court of Justice of the European Union, 2006b) has shown that economic activity "carried out for social purposes is generally not subject to competition law" (Goulding, 2013). Generally, economic activity has been understood as the activity of produce goods or services to the market (European Commission, 2007; Vermeersch, 2007). For this reason, individual athletes, sport clubs, national and international sport organizations are undertakings insofar as they pursue economic activity (Kienapfel & Stein, 2007; Budzinski, 2012), neither professional nor amateur status being relevant (Budzinski, 2012), which must be observed mainly by managers of social and amateur sport associations, for instance, in order to avoid future legal issues.

Another key point, football players employed by clubs are not automatically undertakings (European Commission, 2007). After the case *Union Royale Belge des Sociétés de Football/Association vs Bosman* (European Union, 1995), athletes may be considered undertaking only if they carry out independent economic activities (European Commission, 2007). The same principle was used in the *Christelle Deliege vs Ligue Francophone de Judo et Disciplines Associées* case (European Union, 2000), when the ECJ has concluded that a judoka "participating in an international competition" was exercising an economic activity, in reason of she was pursuing "his own economic interests" (Vermeersch, 2007: 249). About it, athletes need also to consider that, even aiming to reach a financial break-even point to strictly compete in a tournament, individual sponsorships received can turn the competitors into undertakings.

In regards to the second step of Wouters, the European Commission (2007: 65) stresses that it is necessary to observe whether the sportive rule in question restricts competition or it is an abuse of a dominant position. As a whole, the step outlines the need to consider the overall context of the rule, in terms of the decisions made, effects and objectives, evaluating "whether the restrictive effects are inherent in the pursuit of the objectives" and proportionate to them (Kienapfel & Stein, 2007: 7).

Specifically about the objectives, the concept of "legitimate" has been used as the proper parameter (Budzinski, 2012; European Commission, 2007). For instance, in the *Meca-Medina* case, the ECJ has identified that the anti-doping rules of sports cause a restriction, however, in order to preserve the health of the athletes, the reputation of the sport and the fair competition, which are legitimate objectives (Reinisch, 2012). The *Deliege* case also had a restrictive rule, legitimate as well, with regards to limiting the number of competitors in international tournaments (Vermeersch, 2007). Completing the idea behind the step two, Vermeersch (2007: 245) declares that the restrictions "must be limited to what is necessary to ensure the proper conduct of competitive sport". Indeed, this point should be clear to sport institutions aiming to avoid reputation damages caused by illegitimate goals.

The third step is taken with the Member States of the EU, that is, whether the rule in question affects the trade between them. In line with Vermeersch (2007), this aspect has received "little attention" in sport cases. Last but not least, step four brings in whether the sportive rule falls into the conditions of the Article 101 (3) or is able to provide a justification based on article 102 (European Commission, 2007; Budzinski, 2012).

In general, the four steps explain topics that have to bear in mind of sport managers. In fact, the steps are a useful guide to analyze in advance the possible effects of rules and decisions on a sport and its components in the light the articles 101 and 102. Besides that, it

is essential to remember that the Courts have the power to prohibit actions and to impose fines (Reinisch, 2012), which can compromise the future and viability of European sport companies, championships, managers, associations, clubs and athletes.

In a different point of view, the mentioned Law offers some exemptions. For instance, “once established that a certain sporting rule does not meet the criteria set out in *Wouters*, one might look for justification” under the third part of the article 101 (Vermeersch, 2007: 252).

In short, sports managers should assess if their athletes and entities are under the umbrella of the EU Competition Law taking into account the *Wouters*’ steps and the elements of the article 101 (3). Certainly, a correct observation of these frameworks may

avoid legal disputes in Court, not to mention, when followed correctly, the abovementioned articles tend to provide a structural parameter for managers to better plan competitions and commercial agreements.

4.2 Relevant Jurisprudences Applied for European Sport Managers and Institutions

In line with Siekmann (2012), the portray of cases regarding applications of TFEU provisions, aligned with the decision-making practice of the ECJ, may assist to identify types of rules that could be considered (or not) infringing EC competition rules. In resume, a group of cases has offered more relevant elements that have been influencing the use of the EU Competition Law on sports issues. The table below summarizes then:

Table 1: Relevant cases involving sport issues.

Case		Main contributions:	Authors:
1	<i>Walrave and Koch vs Association Union Cycliste Internationale</i> (1974)	The first ruling issued in sports area. The Court ruled that the practice of sport is subject to EU law only in so far as it constitutes an economic activity.	Fidanoğlu (2011) and Geeraert (2017)
2	<i>Gaetano Donà vs Mario Mantero</i> (1976)	The ECJ stated that regulations based on nationality were not in conformity with the principle of free movement of workers, being permissible only in noneconomic aspects. The applicability of the concept of sport specificity was explicitly not accepted.	Fidanoğlu (2011) and Siekmann (2012)
3	<i>European Commission vs 1990 World Cup - Case 33384</i> (1992)	The Commission decision relating to ticketing arrangements for the 1990 Football World Cup, when other travel agencies (apart from the official one) could not obtain tickets from any other source, stated that the exclusive distribution system infringed the EU Competition Law.	European Union (2010)
4	<i>Gottrup Klim Grovvareforening vs Dansk Landbrugs Grovvaresel</i> (1994)	For the first time, it was showed the idea of legitimate objectives as a justification for restrictions on sport competitions.	European Union (1994)

5	<i>Union Royale Belge des Sociétés de Football/Association vs Bosman</i> (1995)	The case has changed the universal sports regulations, adjusting the transfer system in sports. Athletes would be considered undertaking only if they carry out independent economic activities. The Court reasoned that the old transfer fee system did not effectively maintain the legitimate objective of financial and competitive balance.	Fidanoğlu (2011), European Commission (2007), Geeraert (2017) and Siekmann (2012)
6	<i>Christelle Deliege vs Ligue Francophone de Judo et Disciplines Associées</i> (1996)	The Court stressed that selection criteria based on a limit of a number of national participants in an international competition does not constitute a restriction on the freedom to provide services. Athletes participating in international competitions were considered exercising an economic activity, in reason of she/he was pursuing her/his own economic interests.	Vermeersch (2007) and Siekmann (2012)
7	<i>European Commission vs 1998 Football World Cup - Case 36888</i> (1999)	The Commission decision relating to ticketing arrangements for the 1998 World Cup found an abuse by the French organizing committee under the Competition Law as it had imposed unfair trading conditions which discriminated against non-French residents and resulted in a limitation of the market for those consumers.	European Union (2010)
8	<i>Communauté Urbaine de Lille vs UEFA - Mouscron case</i> (1997)	The Commission accepted that each club must play its home match at its own ground ("at home and away from home" rule), as it being a sports rule that does not fall within the scope of the Treaty's competition rules.	European Commission (1999)
9	<i>Brentjens Handelsorderneming BV vs Stichting Bedrijfspensioenfonds voor de Handel in Bouwmaterialen</i> (1999)	The Court found that collective labor agreements can escape the reach of competition law if it is demonstrated that the agreement improves the employment and labor conditions of those covered by the agreement.	Parrish, García, Miettinen & Siekmann (2010)
10	<i>Jyri Lehtonen and Castors Canada Dry Namur-Braine vs Fédération Royale Belge des Sociétés de Basketball</i> (2000)	The Court found a restriction of the free movement (different transfer deadlines for EU and non-EU citizens), but considered that the restriction could, in principle, be justified (legitimate objectivities). The ECJ acknowledged the important role of transfer deadlines in ensuring the regularity of competition and competitive balance. However, the Court ruled that this discrimination went beyond what was necessary.	Court of Justice of the European Union (2000) and European Union (2010)

11	<i>The English National Investment Company (ENIC) vs UEFA</i> - Case COMP/37 806 (2002)	If two or more clubs are under the common control of a single entity only one is entitled to be entered into a UEFA club competition. The Court agreed that the object of the contested rule was not to distort competition; furthermore, the measure did not go beyond what was necessary to ensure the legitimate aim of protecting the uncertainty of the results and maintaining the integrity of the competition.	Parrish, García, Miettinen & Siekmann (2010)
12	<i>Wouters and Others vs Algemene Raad van de Nederlandse Orde van Advocaten</i> (2002)	Based on this case, a methodological approach was elaborated targeting to evaluate whether a rule adopted by a sport association infringes the articles of the EU Competition Law.	European Commission (2007) and Kienapfel & Stein (2007)
13	<i>European Commission vs UEFA Champions League</i> - Case 37398 (2003)	A Commission for the first time accepted joint selling of football media rights and laid out principles for a pro-competitive rights structure. It was required to UEFA to organize a competitive bidding process under non-discriminatory and transparent terms. Although UEFA had the exclusive right to sell the packages of live rights, individual clubs could sell certain live rights relating to their matches in case UEFA would fail to sell them.	European Union (2010) and Geeraert (2017)
14	<i>Laurent Piau vs Commission of the European Communities</i> (2005)	A governing sport body did not have the legitimacy to regulate profession ancillary to the sport; the General Court considered that the football agent's activity did not pursue a purely sporting interest, where regulations constituted a restriction on competition.	Court of Justice of the European Union (2005), European Commission (2007), European Union (2010) and Siekmann (2012)
15	<i>David Meca-Medina and Igor Majcen vs Commission of the European Communities</i> (2006)	For the first time, the ECJ has pronounced on the application of EU Competition Law to organizational sporting rules.	European Commission (2007)
16	<i>'Which?' vs FIFA and the German Football Association</i> - Case 39177 (2006)	A British consumer organization went against FIFA and the German Football Association concerning the MasterCard exclusivity arrangements for tickets intended for the general public. The Commission said that there needed to be a viable alternative, which could take the form of other payment forms for direct sales or other sales channels for which there is no credit card exclusivity.	European Union (2010)

17	<i>Motosykletistiki Omospondia Ellados (Motoe) vs Elliniko Dimosio</i> (2008)	Rules protecting commercial activities using sportive anti-competitive basis were refused by the Court.	European Union (2008) and Budzinski (2012)
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Although some of the cases above are not directly related to the EU Competition Law, for instance, when freedom of movement is treated, they were the opening door to the overall current legal framework that surrounds sports issues.

Based on what was described by now, a group of sport rules that are not likely able to infringe the articles 101 and 102 has been listed. Supported by the European Commission (2007) and Budzinski (2012), these rules could be concerned, firstly, with the selection criteria for sport competitions / Entry rules, like in the *Deliege* case. Secondly, the “at home and away from home” rule, used in the *Mouscron* issue (European Commission, 1999). The third, rules preventing multiple ownership in club competitions, which “aims to ensure the uncertainty of the outcome and to guarantee that the consumer has the perception that the games played represent honest sporting competition” (European Commission, 2007: 71). The fourth group, regards to rules of composition of national teams, whereas the fifth is concerned about anti-doping rules, as those applied in the *Meda-Medina* case. In the sixth place, rules that affect transfer periods (“transfer windows”), for example, in the *Jyri Lehtonen and Castors Canada Dry Namur-Braine vs Fédération Royale Belge des Sociétés de Basket-ball* case (Court of Justice of the European Union, 2000) which argued that these periods may be used supported by legitimate objectivities.

On the other hand, there is a group of rules that has been proved as likely sources of problems facing the 101 and 102 articles. Underpinned by Kienapfel and Stein (2007) and the European Commission (2007), these rules approach: protecting sport associations from competition, excluding legal challenges

of decisions by sports associations before national courts, regulating professions ancillary to sport, limiting the number of foreign (but European) players, unlimited regulatory power to governing bodies, exclusivity of service providers and rules requiring transfer payments for players in case of expired contracts.

In this sense, the *Bosman* case is a remarkable example, in reason of it had involved issues related to limiting the employment of foreign players (European Commission, 2007), nationality elements and transfer payment (Budzinski, 2012). Similarly, the case *Laurent Piau vs Commission of the European Communities* (Court of Justice of the European Union, 2005) deserves attention, because it has brought that a government sport body does not have the legitimacy to regulate profession ancillary to the sport, e.g.: the FIFA’s agents (European Commission, 2007). Not less important, rules protecting commercial activities using sportive anti-competitive basis have been strongly refused by the Courts (Budzinski 2012), for example, the investigations around the *Federation Internationale de l'Automobile - FIA* (European Commission, 2001) and the case *Motosykletistiki Omospondia Ellados vs Elliniko Dimosio* (European Union, 2008). In order to avoid legal problems to sport entities, Kienapfel and Stein (2007) describe a series of “remedies”, such as: tendering, limitation of the duration of exclusive vertical contracts, limitation of the scope of exclusive vertical contracts, no conditional bidding and the use of trustees.

4.3 Current Context

Nowadays, sport managers should observe the TFEU as the central point regarding the European competition legal environment for sports. Since 2009, a new article (165) brings that the EU shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, promoting fairness and openness in sporting competitions, cooperation between bodies responsible for sports and protecting the physical and moral integrity of sportsmen and sportswomen. In this sense, the Court has now direct duties in terms of to analyze, monitor and regulate sport issues, which includes the Competition Law (Parrish, García, Miettinen & Siekmann, 2010).

Certainly, the Courts are now supporting their decisions about sport issues not only based on the TFEU, but also on the White Paper and referential cases. In parallel, sport policies have been guided by the judgments of the ECJ (Fidanoğlu, 2011). At the same time, each EU Member State is responsible for the implementation of TFEU within its own legal system (Geeraert, 2017). Therefore, European sport public authorities must now consider articles 101 and 102 when acting directly or indirectly (through partnerships with governing bodies) aiming to structure their own sport system and policies, regarding the necessary framework involving institutions, athletes, fans and consumers.

As mentioned by Budzinski (2012: 46), national legal frameworks “must stand in line with European competition policy in the narrow sense”. In this sense, the European law should prevail upon national legal decisions. Thus, decisions from a Court regarding Competition Law, its applicability for instance, currently create a domino effect on the States, which reflects on the sport and its peculiarities. In a different point of view, this domino effect also has some effects on other non-European countries. For example, Sato and Yeung (2013) highlighted that the laws related to

broadcasting rights in Brazil, in somehow, support their principles on European jurisprudences and models.

Equally important, the EU Commission acknowledges that sport contains special specificities, distinguishing this industry and its related markets from ordinary business (Budzinski, 2012). As a consequence, the specificity of the sports has been used as an argument to support exceptions facing the Competition Law (Vermeersch, 2007), which includes aspects like: the necessity of limitations on the number of participants in sport competitions; to ensure uncertainty of outcome; to preserve competitive balance; the integrity of the competition and its athletes; the interdependence between competing adversaries; the educational, public health, social, cultural and recreational function role, the volunteering aspect and the organisation of the sport on a national basis (European Commission, 2007; O’Leary, 2012; Budzinski, 2012; Kienapfel & Stein 2007; Parrish, García, Miettinen, & Siekmann, 2010).

Considering these specificities, a case-by-case approach has been used to analyze each sporting rule through the lengths of the EU Competition Law, which “offers the advantage of deciding each case on its own merits” (Budzinski, 2012: 51). In particular, this strategy is underpinned by the *Wouters* principles, preventing “any general categorisation of sporting rules” related to their compatibility or not with the articles 101 and 102 (Kienapfel & Stein, 2007: 8). Once more, it is worth mentioning that the applicability of the concept of sport specificity was explicitly not accepted by the ECJ in several cases (Siekmann, 2012), which needs to be taken into account by sport managers.

In terms of structure, sports have been organized by a monopolistic pyramid structure (an umbrella organization), which provides to the entities on the top a regulatory authority, outlining the rules of a game that are adopted by the respective and subsequent sport associations (Budzinski, 2012; Kienapfel &

Stein, 2007). In a different perspective, Rompuy (2015: 4) brings in that several Member States of the EU delegate “public or quasi-public” regulatory functions to national sport organizations. Therefore, based on O’Leary (2012), a sport governing body (generally a private organization) can perform its regulatory role through standard terms and conditions around the organization of competitions, measures that affect the relationship between players and clubs (employability) and shared income.

About this regulatory function, the *Motoe* case provides some relevant insights. In that case, the government has legitimized and established special powers for a dominant undertaking, the ELPA (Automobile and Touring Club of Greece). Back then, ELPA could effectively prevent rival competitions, what was alleged by *Motoe* as an abuse of dominant market position (Geeraert, 2017). The ECJ said that where a Member State granted regulatory powers to a sporting body that was also undertaking economic activity, that grant might be liable to lead the economic actor to abuse of their resulting statutory dominant position (Geeraert, 2017). As a solution, sports governing bodies are now orientated to separate sport regulation and commercial areas (Parrish, García, Miettinen & Siekmann, 2010).

Recognizing these perspectives, regulatory rules concerning competition elements that could affect sports may come from institutions empowered by worldwide sport movements (e.g.: the Olympic movement), other sport governing bodies, public (sport) organizations and professional associations (e.g.: national football coaches association). As a result, managers and institution must monitor other State Members regulations and their consequences towards the European Courts in order to get a real and up to date benchmark about what is permitted (or not) in the light of articles 101 and 102.

Last but not least, sport managers have to bear in mind that European Commissions

and Courts are not operating within a political vacuum, then, clearly some top-down legal decisions and orientations affecting sport institutions are undermined by political powers, for instance from big international sports organisations, who lobby the European Parliament (Geeraert, 2017).

4.4 – The Shape of Sport Practices Nowadays

As a whole, sport managers and institutions need to shape their strategic initiatives guided by the two macro-objectives of the Competition Law: ensure economic efficiency and protect consumers (Martins, 2015). However, being treated as undertakings, European sport organizations have clear limitations towards articles 101 and 102. Geeraert (2017) affirms that managers should so to analyze the implications of their attitudes/rules and, even pursuing a legitimate objective, do not go beyond what is necessary for the achievement that purpose.

Currently, the jurisprudence achieved over the years indicates that sport institutions will be assessed under the EU Competition Law considering whether some rule or action pursues a legitimate objective and whether it is proportionate to the objective outlined. Parrish, García, Miettinen and Siekmann (2010) put emphasis on anti-doping rules and the UEFA Fair Play regulations as examples of forms to regulate athletes and organizations actions, but positively underpinned by articles 101 and 102. Despite being, apparently, accepted by the authorities, even the Fair Play regulations (its economic variables), has been receiving negative reviews through the argument that they financial points violate the freedom of competition and, so, the EU Competition Law (Relógio, 2013).

As long as athletes, clubs, teams, associations and managers can be seen as undertakings (Geeraert, 2017) commercial activities are on the analysis’ table of the ECJ. Nowadays, broadcasting collective sales are a concern under article 101(1). Based on the

cases above mentioned, the collective sale of sports rights is permissible under European law. On the other side, the practice of selling rights to one broadcaster is not allowed, though (Parrish, García, Miettinen & Siekmann, 2010). Consequently, the sale of packages containing different media rights has been the formula found by sport managers to improve incomes being in accordance with the Law. Even joint selling being able to create efficiencies, the case-by-case approach will once again orientate any analysis (Geeraert, 2017; Sato & Yeung, 2013).

Since the Nice Declaration, sporting organizations and the Member States have a primary responsibility in conducting sporting affairs (Siekmann, 2012). Nevertheless, it seems like the possibility of fines is the most relevant form to shape the actions of managers, insofar as it is considered the main method of enforcement of EU Competition Law (Wils, 2002). Correlating both aspects, it has to be clear to public sport managers and entities also that the State has now limits about its incentives to sports. Using football as an example, a State needs to ensure that competition between clubs is not distorted by state subsidies, avoiding unfair competitions (European Commission, 2017a; 2017b). Even overtaking articles 101 and 102 reach, they can be used to justify penalties when a Member gives privileges to sport organizations, for instance, teams like Real Madrid and Barcelona have received unjustified tax privileges in Spain. As a result, the Commission asked back those non-paid taxes being a final amount determined by Spanish authorities (European Commission, 2017a).

Finally, in terms of future initiatives from sport managers and organizations, it is now clear that all of them must observe the macro-objectives of the Completion Law and the *Vouchers* approach, mainly. Taking the subject from the work of Parrish, García, Miettinen and Siekmann (2010), for instance, in the future, European football may decide to strengthen cost control further by introducing

a salary cap, which would be aligned with the regulation/monitor trend observed by the evolution of the Competition articles and cases. Probably, a cap would be removed from the scope of articles 101 and 102 if the measure does not go beyond what is necessary for the attainment of these objectives, in favor of the sport specific necessities, like the uncertainty of the results and competitive balance.

5. CONCLUSION

This paper brought a list of rules that are aligned (or not) with the European Competition Law. The infringement of the abovementioned articles 101 and 102, not only can result in fines or prohibitions by Courts, but also in damages to the sport's reputation and image, which sport managers have to consider while planning new rules or following them in their routines. Thus, based on the cases portrayed above, managers can have an initial idea about how far or in which extent new measures can result in infringement or not of the EU Competition Law.

To conclude, it is clear nowadays the importance and relevance of the EU Competition Law to sport managers and their institutions, the respective articles 101 and 102 of the TFEU added with the legal cases shown in this paper offer guidance in terms of which kind of initiatives and strategies may be considered (or not) illegal by EU Courts, presenting then real parameters and examples for managers. Surely, any initiative needs then to observe the necessity of legitimate objectives supporting it and the proportionality of the actions in order to achieve these goals.

In short, institutions and their managers should also consider that the specific features of sport are not an argument taken as granted aiming to avoid the application of articles. Nevertheless, the case-by-case approach adopted by Courts has been permitting sport organizations to contextualize the legal decision-making process. In this way, sports have the chance to be managed, commercialized and regulated according to their features, being

determinate the correct posture and actions of their managers.

All the elements and aspects discussed lead to believe that the case-by-case analysis is the best option for sport issues and judgments. After all, general exemptions or applications could not take into consideration the specificities of the sport phenomenon. However, it is crucial to remember that even purely sporting rules are subjects to the TFEU nowadays. Additionally, sport managers should always foresee the effects of their rules and decisions on the sport industry, in terms of restricting or distorting competition, not being relevant the status of public, professional or

amateur. In addition, the “remedies” proposed by Kienapfel and Stein (2007) should be taken into account as a north for sport managers in their respective activities, insofar as to learn with others error is an essential characteristic of good administrators.

In this sense, European sport managers must consider the abovementioned legal frame in order to avoid unnecessary financial and image damages. Furthermore, non-Europeans managers and governments could use this legal code and cases as examples to improve their legal frames, especially taking into account the ideas of legitimate objectives and proportionality of the actions.

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